MOTION FILED FEB 27 1963
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

October Term 1962

No. 16

BANCO NATIONAL DE CUBA,

Petitioner,

vs.

PETER L.F. SABBATINO, et al.,

Respondents.

PETITION FOR LEAVE TO BE HEARD AS AMICUS CURIAE.

JAMES A. DIXON
Attorney for Petitioner

Address:
9th Floor, Dade Federal Building
101 East Flagler Street
Miami 32, Florida

IN THE

Supreme Court of the United States

October Term 1962

No. 403

BANCO NATIONAL DE CUBA,

Petitioner,

vs.

PETER L.F. SABBATINO, et al.,

Respondents.

PETITION FOR LEAVE TO BE HEARD AS AMICUS CURIAE.

Comes now Pan-American Life Insurance Company and shows unto the court as follows:

1. Pan-American Life Insurance Company is a corporation organized and existing under the laws of Louisiana. American National Insurance Company is a corporation organized and existing under the laws of Texas. The United States Life Insurance Company in the City of New York is a corporation organized and existing under the laws of New York. Occidental Life Insurance Company of North Carolina is a corporation organized and existing under the laws of North Carolina.

2. Prior to October 24, 1960, each of said insurance companies was authorized to do business in the Republic of Cuba and had in fact been engaged in conducting the business of life insurance in that country. Each of the said companies had invested substantial sums in assets in Cuba.

3. On July 6, 1960, the Republic of Cuba enacted Law No. 851, which in substance authorized the promulgation of subsequent Resolutions of expropriation against citizens of the United States, American corporations, and Cuban corporations controlled by American citizens.

4. Resolution No. 1, promulgated August 6, 1960, under this law is involved in this cause. Resolution No. 3 under Law No. 851, promulgated October 24, 1960, expropriated the said companies along with numerous other American citizens and corporations.

5. Resolution No. 3 further substituted the Cuban state as the obligor upon the liabilities of the petitioner and said other companies upon the policies of insurance issued by them in Cuba.

6. Litigation has been started by Cuban nationals who are policyholders of the said insurance companies in various courts of this country, as follows:

(a) Against Pan-American Life Insurance Company in both State and Federal Courts in Miami, Jacksonville and Tampa, Florida, and in the State courts of Louisiana.

(b) Against American National Insurance Com-

pany in State and Federal courts in Miami, Florida, and in State courts in Texas.

(c) Against The United States Life Insurance Company in the City of New York, in the State and Federal courts in Miami, Florida, in the Commonwealth courts of Puerto Rico, and in the State courts of New Jersey.

(d) Against Occidental Life Insurance Company of North Carolina, in the State courts in Raleigh, North Carolina.

7. There are now pending more than twenty lawsuits as described above, and your petitioner is informed that probably hundreds of others are in prospect. Your petitioner and the other said companies are admitted to do business in most of the States of the United States and are subject to service of process therein.

8. In the pending and prospective litigation your petitioner and said other companies have taken, and will take, the position that Law No. 568 of the Republic of Cuba, Law No. 851 and Resolution No. 3, taken together, have terminated the rights of Cuban nationals to make or receive payments anywhere except in Cuba or except in Cuban currency, or to demand performance of your petitioner and said other companies, and have confined their rights under life insurance policies to looking solely to the substitute obligor thereon, the Republic of Cuba.

9. Your petitioner and said other companies have taken, and will take, the position that Law No. 568 is a currency control regulation "imposed and maintained consistently with" the Bretton Woods Agreement and with

22 U.S.C.A. 286 h, insofar as it relates to capital transfers, and that the recovery by Cuban nationals in this country of policy benefits on policies issued in Cuba is a capital transfer, and that the courts of this country are bound to give Law No. 568 effect in this country.

10. A re-examination of the Act of State doctrine, in the factual context of the controversy between the petitioner and the respondents, will involve far wider considerations than are necessary to the application of that doctrine, in its narrowest and most indisputable form, to the factual context of your petitioner's controversies.

11. The record parties to the present cause, and the intervenors, apparently do not rely upon Law No. 568, and are not concerned with those aspects of Law No. 851 and the expropriation resolutions which affect the rights of Cuban nationals against expropriated American concerns. The petitioner, therefore, fears that, in the presentation of their arguments to this court, the record parties and intervenors may overlook the distinction between the effect of the Cuban legislation on Cuban nationals and its effect on American citizens and corporations. Failure to advert to this important distinction may, conceivably, mislead this Honorable Court into the use of language in its opinion which would not clearly recognize and give effect to this distinction. Such a result would greatly prejudice the petitioner in its defenses to pending and prospective litigation.

12. The petitioner, therefore, desires to file a short brief to urge upon this Honorable Court the desirability and necessity of observing this distinction and limiting

its opinion to the factual situation involved in the instant cause.

WHEREFORE, your petitioner prays that leave be granted it to be heard, amicus curiae, through a member of the bar of this Honorable Court for the purpose above indicated.

Respectfully submitted,

Pan-American Life Insurance Company

By: JAMES A. DIXON

Member of the Bar of this
Honorable Court

Address:

9th Floor, Dade Federal Building
101 East Flagler Street
Miami 32, Florida

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY that on the _____ day of _____, 1963, a copy of the foregoing Petition was served upon all counsel of record, including amicus curiae, by prepaid mail.

JAMES A. DIXON

Member of the Bar of this
Honorable Court